



November 9, 1999

Mr. Gary W. Smith  
Legal Advisor  
Baytown Police Department  
3200 North Main Street  
Baytown, Texas 77521

OR99-3183

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128693.

The Baytown Police Department (the "department") received a request for the report of an accident identified by time, location, and names of drivers; as well as information related to any subsequent investigation into that accident. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The submitted information includes an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Access to such information is governed by provisions outside the Public Information Act. The Seventy-fifth Legislature repealed V.T.C.S. article 6701d and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S., ch. 1187, 1997 Tex. Gen. Laws. 4575, 4582-4583 (to be codified at Transp. Code § 550.065). However, a Travis County District Court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Association, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 617, 358 S.W.2d 589 (1962). The Supreme Court has defined the status quo as

“the last, actual peaceable, non-contested status that preceded the pending controversy.” *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.<sup>1</sup>

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has provided the statutorily required information. Therefore, if this report was completed pursuant to chapter 550 of the Transportation Code, you must release a copy of the accident report to the requestor.

Note however, that the statute provides only for the required release of a copy of accident reports. V.T.C.S. 6701d § 47(b)(1); Transp. Code § 550.065. The Transportation Code also provides for the costs associated with these copies. Transp. Code § 550.065(c); *see* Gov’t Code § 552.262 (General Services Commission establishes charges for copies, “except to the extent that other law provides for charges for specific kinds of public information.”); *see*

---

<sup>1</sup>Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Gen. Laws 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov’t Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414.

Gov't Code § 552.271 (governmental body may not charge for inspection of records). We believe that you must provide a copy of such accident reports at the statutorily mandated cost.

We note that among the submitted documents is an autopsy report. Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy reports be made available to the public. Open Records Decision No. 525 (1989). Section 11 has been amended to provide that

[t]he records [of an autopsy] are subject to *required* public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76<sup>th</sup> Leg., R.S., ch 607, § 2. This amendment took effect on September 1, 1999. *Id.* § 3. We conclude that the department must release the autopsy report to the requestor.<sup>2</sup>

We now address the remaining responsive information. Section 552.108(a)(2) of the Government Code excepts from required public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” You relate that the subject information relates to a closed investigation into a fatality accident and that the investigation did not result in criminal charges being filed. Based on your representation, we conclude that you have established the applicability of section 552.108(a)(2) with regard to the information developed in the investigation. This information may be withheld.

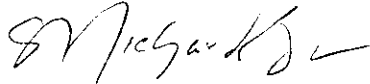
Since the above discussion resolves this request, we do not address your argument raised under other sections of the Government Code. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the

---

<sup>2</sup>The submitted documents do not appear to include photographs or x-rays taken during the autopsy. To the extent that such photographs or x-rays exist, they must be withheld pursuant to article 49.25 of the Code of Criminal Procedure.

particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns", with a stylized flourish at the end.

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 128693

Encl. Submitted documents

cc: Mr. Jim Manen  
5011 Forest Nook Court  
Houston, Texas 77018  
(w/o enclosures)